

(5) *Amendment of awards.* Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) *Rounding of monthly rates.* Any monthly rate computed under the provisions of this paragraph, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) *Claimants not entitled to this special allowance.* The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

(d) *Appellate jurisdiction.* VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) *Claims—formal and informal.* Formal claims for this special allowance must be filed on a form prescribed by the Secretary of Veterans Affairs. When informal claims or inquiries as to eligibility are received, the appropriate application form shall be provided. In such cases, the date of receipt of the informal claim or inquiry will be accepted as the date of claim for this

special allowance if a formal claim on the prescribed form is received within one year from that date.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, benefits shall be payable for all periods of eligibility beginning on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

(Authority: Sec. 156, Pub. L. 97-377, 96 Stat. 1830, 1920 (1982))

[49 FR 21709, May 23, 1984, as amended at 54 FR 26030, June 21, 1989; 60 FR 20643, Apr. 27, 1995]

**§ 3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.**

(a) *Disability benefits.* Except as provided in paragraph (c) of this section, a veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) *Death benefits.* Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same eligibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) *Exceptions.* Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by

the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the veteran was not exposed to dioxin during active military, naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by VA (except chapters 11 and 13 of title 38 U.S.C.), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Authority: Pub. L. 98-542)

[50 FR 34460, Aug. 26, 1985]

**§3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran or a veteran with covered service in Korea.**

(a) *Monthly monetary allowance.* VA will pay a monthly monetary allowance under subchapter I of 38 U.S.C. chapter 18, based upon the level of disability determined under the provisions of paragraph (d) of this section, to or for a person who VA has determined is an individual suffering from spina bifida whose biological mother or father is or was a Vietnam veteran or a veteran with covered service in Korea. Receipt of this allowance will not affect the right of the individual or any related person to receive any other benefit to which he or she may be enti-

tled under any law administered by VA. An individual suffering from spina bifida is entitled to only one monthly allowance under this section, even if the individual's biological father and mother are or were both Vietnam veterans or veterans with covered service in Korea.

(b) [Reserved]

(c) *Definitions*—(1) *Vietnam veteran.* For the purposes of this section, the term "Vietnam veteran" means a person who performed active military, naval, or air service in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, without regard to the characterization of the person's service. *Service in the Republic of Vietnam* includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam.

(2) *Covered service in Korea.* For the purposes of this section, the term "veteran with covered service in Korea" means a person who served in the active military, naval, or air service in or near the Korean DMZ between September 1, 1967, and August 31, 1971, and who is determined by VA, in consultation with the Department of Defense, to have been exposed to an herbicide agent during such service. Exposure to an herbicide agent will be conceded if the veteran served between April 1, 1968, and August 31, 1971, in a unit that, as determined by the Department of Defense, operated in or near the Korean DMZ in an area in which herbicides are known to have been applied during that period, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

(3) *Individual.* For the purposes of this section, the term "individual" means a person, regardless of age or marital status, whose biological father or mother is or was a Vietnam veteran and who was conceived after the date on which the veteran first served in the Republic of Vietnam during the Vietnam era, or whose biological father or mother is or was a veteran with covered service in Korea and who was conceived after the date on which the veteran first had covered service in Korea